

Legislative Oversight in Nebraska: Past and Present

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The Power of Legislative Oversight

Legislative oversight “refers to a legislature’s review and evaluation of selected activities, services, and operations and the general performance of the executive branch of government.” The legislature engages in oversight to ensure the executive branch administers new and existing programs efficiently, effectively, and in a manner consistent with legislative intent.¹

Although the case involved congressional oversight authority, the U.S. Supreme Court in *Watkins v. United States*, 354 U.S. 178 (1957), observed that “a legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.”² The information gained through its oversight activities allows legislatures to enact better laws, establish sound public policy, and be good stewards of public tax dollars.

Legislatures have several tools at their disposal to carry out their oversight duties: standing committees; special committees; performance evaluation; and the “power of the purse.”

Most often, legislative standing committees are responsible for continuous review of the work of the state agencies in their subject areas requiring personnel to appear at public hearings, produce documents, or file reports. Gubernatorial appointees to various positions may have to be vetted at public hearings and/or be confirmed by a vote of the body. Legislatures also create short-term special committees to conduct oversight of agency operation and performance. Within the past 25 years, many legislatures have established permanent performance evaluation offices.³ Finally, by virtue of their role in reviewing and approving agency budget requests, legislatures can influence agency behavior by controlling their funding.

Legislative Oversight in Nebraska

The Nebraska Constitution divides the power of government into three distinct departments, the legislative, executive, and judicial (Neb. Const. Art. II, Sec. 1.1). While the constitution makes no express mention of oversight, it is fair to say that exercising oversight has been an accepted function of the Legislature since the beginning.

The Nebraska Legislature makes use of all the legislative oversight tools in carrying out its oversight work. Following is a brief look at how the Legislature exercises its oversight powers through committees, standing and select, along with the work of the legislative audit office, and the budget process, and how the different oversight tools have evolved with time.

Legislative Committees

First and foremost, as the Supreme Court observed in *Watkins*, lawmakers need information in order to do their work. Neb. Rev. Stat. §§ 50-406, 50-406.01, and 50-407 are the principal statutes which give the Legislature its power of inquiry and investigation.

It is within the inherent power of the Legislature, including the Legislative Council and any standing committee of the Legislature, to secure needed information in order to legislate, hold hearings, and administer oaths, as the council or committee deems necessary, and to conduct investigations of matters within the subject matter jurisdiction of the council or committee. The power of inquiry is broad and indispensable (Neb. Rev. Stat. § 50-406 (1)).

This language was added to the statute in 2020 via LB 681. The bill was, in part, a response to concerns raised in 2018 in connection with the Judiciary Committee's investigation of the Department of Correctional Services and its difficulty in trying to obtain information.

Further, the statute authorizes the Legislative Council, a standing committee of the Legislature, or a special legislative investigative or oversight committee to hold public hearings, administer oaths, issue subpoenas under certain circumstances, compel the attendance of witnesses, the production of any papers, books, accounts, documents, and testimony, and take depositions. (Neb. Rev. Stat. § 50-406 (2), (3) and (4)).

The original basis for this statute traces back to LB 395 adopted in 1937. The bill created a fifteen-member legislative council charged with (a) collecting information concerning the government and general welfare of the state; (b) examining the effects of previous statutes and recommending changes as needed; and (c) dealing with "important issues of public policy and questions of state-wide interest." In order to carry out its duties, the council was given the "authority to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony." (Laws 1937, LB 395, §§ 1, 2, and 4).

LB 395 also forms the foundation for the establishment of special committees by the legislative council.

The council may, if it be deemed advisable to facilitate a solution of any special problem, definite proposal or concrete issue before it, call to its assistance from the body of the Legislature one or more members thereof outside of said council from time to time to serve on special committees of the council (Laws 1937, LB 395, § 2).

Unfortunately, there is no background documentation to shed light on the impetus for bringing the bill. While there is a hearing transcript, it is basically just meeting minutes and does not add any information to the story. And, additionally, there is no Statement of Intent available. The Legislature's electronically searchable records only go back to 1937, so it was not possible to go any further back in the legislative history in the time available.

It is interesting though that the year 1937 saw the establishment of a select committee to investigate the Department of Roads and Irrigation. The five-member committee appointed by the Speaker was tasked with:

making a thorough investigation and audit of the Department of Roads and Irrigation or of its predecessor, the Department of Public Works.” Laws 1937, LR 5, § 1. The committee was “clothed with full powers to make such investigation as they may see fit ... and that said committee report its findings in writing ... to the end that said Legislature may intelligently determine whether or not said Department of Roads and Irrigation is now being administered and has been administered in the past in an efficient manner and whether any existing abuses are present therein which ought to be corrected. (Laws 1937, LR 5, § 2).

The committee was granted wide ranging authority.

[S]aid committee shall have full power and authority and it shall be its duty to prosecute its inquiries in any and every direction and by any and every means in its judgment necessary or proper to enable it to obtain information in regard to and report upon matters contemplated in this resolution. Whenever in its judgment the public interest demands, the committee may require any public officer, deputy, assistant or any public employee paid directly by means of public funds, or any other individual to testify before them and to produce books, papers or other documents in obedience to the subpoena of said committee” (Laws 1937, LR 5, §4).

The statute was amended in 1949 by extending the “authority to administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents, and testimony” from the legislative council to any *committee of the council* (Laws 1949, LB 540, § 6). Again, there is no documentation to shed any additional light on the facts behind the change.

Fast forward to 2013, and LB 613, among other things, expanded the investigative authority to include the Legislative Council, any committee of the council, *any standing or special committee created by statute or resolution* to hold public hearings, administer oaths, and issue subpoenas.

LB 613 was passed in conjunction with the Tax Modernization Committee study. As part of the process the committee held five hearings across the state to study all areas of taxation and figure out adjustments that would be more reflective of the economy. The committee did not find it necessary to use subpoenas or compel witnesses to testify, however.

The latest update to the statute occurred in 2020 (LB 681) and authorizes *special legislative investigative or oversight committees* to hold public hearings, administer oaths, and gather information pursuant to a statute or legislative resolution that provides for a specific legislative inquiry or investigation.

As can be seen, as the statute has been changed over the years who has investigative authority has consistently been broadened.

A second thread that runs through statutory history has been the use of subpoenas; who can issue them and under what circumstances. Just as who has investigative power has broadened, who is authorized to issue subpoenas has broadened.

As far back as 1937, subpoenas were included as an essential part of the information gathering tool kit.

In the discharge of any duty herein imposed the council shall have authority to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony, and to cause the depositions of witnesses either residing within or without the state, to be taken in the manner prescribed by law for taking depositions in civil actions in any district court. In the case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council, or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or of the judge thereof, on application of a member of the council to compel obedience by proceedings for contempt. (Laws 1937, LB 395, § 4.

In 1949 the statute was amended by giving any committee appointed by the Legislative Council the above-referenced powers. (Laws 1949, LB 540, § 3).

In 1965, the ability to issue subpoenas was made contingent upon approval of a majority of the council or committee (Laws 1965, LB 36, § 1) and in 2013, “when the committee has received prior approval by a majority vote of the Executive Board of the Legislative Council to issue subpoenas in connection with the specific inquiry or investigation in question” (Laws 2013, LB 613, § 1).

Significant changes were made to the statutes dealing with legislative subpoenas in 2020. In part, the changes were made in response to *State ex rel. Peterson v. Ebke*⁴, 303 Neb. 637, 930 N.W.2d 551 (2019). In this case the state challenged a subpoena issued during the 105th Nebraska Legislature and the Senators appealed. The Supreme Court dismissed the appeal as moot, holding that the subpoena expired at the commencement of the 106th Nebraska Legislature.

LB 681 (2020) mandates that the Executive Board or the standing committee which issued the subpoena will decide whether a still pending subpoena issued during a previous legislative biennium should be renewed. This must be done within the first ten days of the regular session and if it is renewed, the subpoena is considered to have been in full force and effect for the entire period. Further, the legislature has the constitutional authority to determine its own rules and they cannot be invalidated in a judicial proceeding. (Neb. Rev. Stat. §50-406.01)

Additionally, if a person, including a representative of a state agency or political subdivision fails to comply with a subpoena the Legislative Council or the committee that issued the subpoena may vote to find the person in contempt. And if the person is found in contempt the district court of

Lancaster County may be petitioned to compel the person to comply (Laws 2020, LB 681 § 4; Neb. Rev. Stat. § 50-407).

Over the years, numerous committees have been formed to look into the operations of state government. The following table lists some of them.

YEAR	NUMBER	SPONSOR	DESCRIPTION
1937	LR 5	Miller	Select Committee to Investigate the Department of Roads and Irrigation
1939	LR 7	Miller	Legislative Insurance and Investigation Committee, 1939
1941	LR 12	Garber	Committee to investigate the Permanent School Fund
1943	LR 34	Craven	Electric Power Investigation Committee, 1943
1947	LR 10	Peterson	Providing for a committee to investigate the question of surplus time available for outside work by judges of the Supreme and District courts
1949	LR 17	Holmes	Committee to examine all provisions of the Nebraska statutes relating to children and the interpretation and administration thereof
1953	LR 30	Says	Committee to Investigate the Practices of State Departments
1955	LR 41	McGinley	Committee to Investigate the Structure of the Board of Control and Departments, institutions and Services Under Its Charge
1959	LR 45	Olinger	Committee to study the manner of taxing property and exempting property from taxation
1961	LR 56	Moulton	Committee to Investigate and Determine the Advisability of Continuing the State Tax on Aviation Fuels.
1963	LR 15	Klaver	Committee to investigate absence of suitable machinery for adjudicating labor disputes
1965	LR 41	Proud	Committee to investigate the law of forming sanitary and improvement districts and the practices used in forming such districts.
1967	LR 58	Stryker	Committee to investigate the possibility of more efficient operation by the members of rural public power districts
1969	LR 10	Carpenter	Omaha Public Power District Investigation
1971	LR 7	Waldron	Committee to investigate Nebraska laws relating to casualty insurance, with particular attention to the powers of the Department of Insurance to regulate rates
1972	LR 16	Carstens	Committee to Investigate the Department of Public Institutions to determine what plans, if any, exist for phasing out state hospitals and what place state hospitals are to occupy in the future and whether the Department of Public Institutions has plans for closing any or all state hospitals by 1975 or any other date.
1974	LR 115	Murphy	Committee to investigate the problems and relationships of all agencies dealing with human services.
1975	LR 56	Goodrich	Select committee to conduct a thorough study of the current delivery of human service programs
1976	LR 152	Schmit	Select Committee on State Agency Review which shall undertake a complete and systematic review of the various state agencies, departments, offices, commissions, boards, and any other unit of state government

1977	LR 141	Fowler	Select Committee to Review the Operation of the Criminal and Drug Divisions in the State Patrol
1978	LR 200	Lewis	Special committee to study policy and procedures involved in use of paid benefits time, including sick leave, by personnel at the University of Nebraska.
1979	LR 18	Keyes	Special committee to review public power districts financial reserves and rates for service.
1980	LR 276	Fowler	Special committee to monitor and evaluate the effectiveness of law enforcement agencies in Nebraska
1982	LR 237	DeCamp	Special legislative investigative committee is established for the purposes of in-depth investigation and study of the entire area and spectrum of highway and airport bid-rigging
1984	LR 229	Johnson	Special Commonwealth Committee
1986	LR 335	Conway	Special Committee to evaluate impact of Initiative 300
1986	LR 1	Banking Committee	Investigation into the failure of State Security Savings company and the American Savings Company
1987	LR 189	Scofield	Joint Committee to investigate the current extent of waste regulation and its costs and the extent of legal and financial liability of waste producers and those who dispose of wastes.
1988	LR 357	Conway	Select Committee to focus and coordinate legislative attention on state boundary issues.
1989	LR 5	Schmit	Franklin Community Federal Credit Union Special Investigative Committee
1990	LR 232	Schmit	Continue Franklin Community Federal Credit Union Special Investigative Committee
1990	LR 367	Schimek	Select Committee on Children
1990	LR 298	Barrett	Select Committee to examine the confirmation process used by the Legislature in reviewing gubernatorial appointments.
1991	LR 153	Schimek	Continue Select Committee on Children
1992	LR 383	Schimek	Select Committee to address issues of sexual harassment in the workplace
1995	LR 133	Schimek	Select Committee on Child Abuse
1996	LR 439	McKenzie	Select Committee to study the compensation structure of public K-12 school districts in the State of Nebraska and the structure's relationship and impact on the rate of education budget expansion
2000	LR 320	Suttle	Select Committee on Gender and Minority Equity to monitor progress of the University's compliance in hiring women and minority faculty members
2008	LR 283	Flood	Study the Beatrice State Developmental Center (passed 2008, reconstituted by the Executive Board at the end of its designated term and then re-introduced in the 2009 session).
2009	LR 11	Lathrop	Provide for continuation of the Developmental Disabilities Special Investigative Committee
2011	LB 617	Mello	Create the Administrative Rules Committee of the Legislature (Passed but amended and did not create another committee)
2011	LR 30	Campbell	Provide for continuation of the Health Care Reform Implementation and Oversight Committee
2011	LR 47	Lathrop	Provide for continuation of the Developmental Disabilities Special Investigative Committee

2012	LR 365	Lathrop	Provide for continuation of the Developmental Disabilities Special Investigative Committee
2013	LR 20	Lathrop	Provide for continuation of the Developmental Disabilities Special Investigative Committee
2013	LR 31	Campbell	Provide the Executive Board appoint the Children's Behavioral Health Oversight Committee as a special committee
2013	LB 612	Schumacher	Require the Department of Revenue to present reports to legislative committees
2014	LR 400	Dubas	Provide the Executive Board of the Legislative Council appoint a special committee to be known as the ACCESSNebraska Special Investigative Committee of the Legislature
2014	LR 424	Lathrop	Provide the Executive Board of the Legislative Council appoint a special committee of the Legislature to be known as the Department of Correctional Services Special Investigative Committee of the Legislature
2015	LR 32	Krist	Provide the Executive Board appoint a special committee to be known as the Developmental Disabilities Special Investigative Committee of the Legislature
2015	LR 33	Krist	Provide the Executive Board appoint a special committee to be known as the ACCESSNebraska Special Investigative Committee of the Legislature
2015	LR 34	Krist	Provide the Executive Board reappoint the Department of Correctional Services Special Investigative Committee of the Legislature
2016	LB 954	Krist	Change provisions relating to access to records for and investigations by Inspector General of Nebraska Child Welfare
2016	LR 418	Howard	Provide the Executive Board of the Legislative Council appoint a special committee to be known as the ACCESSNebraska Oversight Committee of the Legislature
2016	LB 442	Bolz	Create the Medical Assistance Managed Care Organization Oversight Committee
2016	LB 539	Krist	Change investigation and report provisions relating to the Office of Inspector General of the Nebraska Correctional System
2016	LR 127	Krist	Provide the Executive Board of the Legislative Council appoint a special committee of the Legislature to be known as the Nebraska Justice System Special Investigative Committee
2017	LR 296	Walz	Provide the Executive Board of the Legislative Council appoint a special committee known as the State-Licensed Care Facilities Investigative Committee of the Legislature
2019	LB 313	Bolz	Provide the Inspector General of Corrections with authority over regional centers
2019	LB 572	Walz	Provide authority for the public counsel over assisted-living facilities
2019	LB 596	Quick	Adopt the Inspector General of Nebraska Public Health
2019	LR 104	Walz	Provide the Executive Board appoint a special committee to be known as the State-Licensed Care Facilities Investigative Committee of the Legislature
2020	LR 298	Howard	Provide the Executive Board appoint a special committee of the Legislature to be known as the Youth Rehabilitation and Treatment Center Special Oversight Committee of the Legislature
2021	LR 25	HHS	Provide for appointment by the Executive Board of a special committee of the Legislature to be known as the Youth Rehabilitation and Treatment Center Special Oversight Committee of the Legislature
2021	LR 29	Cavanaugh	Provide for appointment by the Executive Board of a special committee to be known as the Eastern Service Area Child Welfare Contract Special Investigative and Oversight Committee of the Legislature

Following is at least a partial list of actions in which legislative subpoenas were issued. No official record is kept when a legislative subpoena is issued so the list was prepared with information from the Office of the Clerk of the Legislature.

Actions in which Legislative Subpoenas were Issued

YEAR	NUMBER	COMMITTEE OR SUBJECT
1977	LR 141	Select Committee to Review the Operations of the Criminal and Drug Divisions in the State Patrol
1986	LR 1	Investigation into the failure of the State Security Savings Company and the American Savings Company
1989	LR 5	Franklin Community Federal Credit Union Special Investigative Committee
2008	LR 282	Developmental Disabilities Special Investigative Committee
2014	LR 424	Department of Correctional Services Special Investigative Committee
2017		Special Committee on the Election Challenge to the Qualifications of Senator Ernie Chambers
2018	Judiciary Committee	Subpoena for the appearance of Nebraska Department of Correctional Services Director Scott Frakes before the Judiciary Committee

Reporting Requirements and Hearings

Executive branch agencies, along with many boards and committees are statutorily required to file numerous reports with the Legislature. Requiring reports is certainly not a new occurrence. One has only to look at the first page of the *Second Biennial Report of the Board of Control for Dependent Children For the Biennium Beginning December 1, 1910, and Ending November 30, 1912* to appreciate that fact: "In compliance with the law, I hereby respectfully transmit to you the biennial report of the Board of Control for Dependent Children" It appears, however, that the number of reports being required is on the rise. In fact, between October 1, 2020, and October 1, 2021, over 438 separate reports were filed with the Clerk of the Legislature and the various standing committees by 60 separate entities. This is significantly higher than the five-year average of approximately 360 reports per year. Many reports are required to be filed annually or quarterly, or at other specified times by agencies, others are tied to the performance of specific projects or other activities.

All committee counsels were contacted and asked to provide a list of the reports their committee and/or the Clerk of the Legislature receives annually from the agencies and boards they have oversight responsibility for. Unfortunately, only a handful of counsels responded to the request. Following are some of the examples that were provided:

Agriculture Committee

- Department of Agriculture Commercial Dog and Cat Operator Inspection Act report (Neb. Rev. Stat. § 54-642)
- The Nebraska Invasive Species Council Annual Report (Neb. Rev. Stat. § 37-1406)

Education Committee

- State Department of Education and the Commission for the Deaf and Hard of Hearing joint Language and Literacy Developmental Milestones for Children Who are Deaf or Hard of Hearing Annual Report (Neb. Rev. Stat. § 71-4746)
- State Department of Education Student Achievement and Student Discipline Annual Report (Neb. Rev. Stat. § 79-760.05)
- Learning Community Coordinating Council Use of Funds Report (Neb. Rev. Stat. § 79-2104.02)
- Coordinating Commission for Postsecondary Education Report on Progress Toward Attainment of Higher Education Priorities (Neb. Rev. Stat. § 85-1429).
- Board of Educational Lands and Funds and The Nebraska Investment Council joint report of lands sold and lands acquired and cost-benefit analysis (Neb. Rev. Stat. § 72-240.26)
- Auditor of Public Accounts Consolidated Annual Report of use of funds (Neb. Rev. Stat. § 9-812)

Health and Human Services

- Division of Medicaid and Long-Term Care Medicaid Mental Health Authorization Request Report (Neb. Rev. Stat. § 68-2004)
- Division of Medicaid and Long-Term Care Intermediate Care Facility for Persons with Developmental Disabilities Reimbursement Protection Fund Report (Neb. Rev. Stat. § 68-1804)
- SNAP Options Report (Neb. Rev. Stat. § 68-1017.02)
- Eastern Service Area Pilot Project Lead Agency Monitoring Report (Neb. Rev. Stat. § 43-4408)
- Child Welfare Services Report (Neb. Rev. Stat. § 43-4406)
- Summary of Annual Child Welfare Survey Results (Neb. Rev. Stat. § 43-4407)
- Youth Rehabilitation and Treatment Centers Operations Plan Annual Report (Neb. Rev. Stat. § 43-427)
- Minority Health Initiative Annual Report (Neb. Rev. Stat. § 71-1628.07)
- Local Health Directors Annual Report (Neb. Rev. Stat. § 71-1628.05)

Natural Resources Committee

- Nebraska Department of Natural Resources Water Resources Cash Fund Annual Report (Neb. Rev. Stat. § 61-218(6))
- Annual Report and Plan for Work for the State Water and Review Process (Neb. Rev. Stat. § 2-15,106)
- Nebraska Department of Natural Resources and Natural Resources Commission Annual Report of Indices of Rules and Guidance Documents (Neb. Rev. Stat. § 84-901(1))
- Nebraska Department of Environment and Energy Annual Water Groundwater Quality Monitoring Report (Neb. Rev. Stat. § 46-1304)
- Nebraska Resources Development Fund Biennial Report (Neb. Rev. Stat. § 2-1588)
- Nebraska Power Review Board Biennial Report (Neb. Rev. Stat. § 70-1003)

In some cases, the reports must also be presented to a committee in a public hearing. For example:

- The Department of Revenue is required to prepare an annual Tax Expenditure Report. It must also appear at a joint hearing of the Appropriations Committee and the Revenue Committee and present the report in even-numbered years (Neb. Rev. Stat. § 77-385); and

- The Department of Economic Development and the Department of Revenue must submit an annual report to the Legislature and must present the report at a joint hearing of the Appropriations Committee and the Revenue Committee on or before December 15 of each year (Neb. Rev. Stat. § 77-6521).

The following table sets out various entities who filed at least one report during the 2020-2021 period along with the number of reports they filed.

Number of Reports Filed with Clerk of the Legislature by Submitter October 1, 2020 - October 1, 2021	
Submitted One Report ⁱ <ul style="list-style-type: none"> • Arts Council (Nebraska) • Attorney General (Nebraska) • Banking and Finance (Department of) • Beginning Farmer Board • Court Appointed Special Advocate (CASA) • Child Advocacy Center • Commission for the Blind and Visually Impaired • Comprehensive Insurance Pool • Creighton University • Dairy Industry Development Board (Nebraska) • Educational Lands and Funds (Board of) • Emergency Management Association (Nebraska) • Engineers and Architects (Board of) • Environmental Quality (Department of) • Game and Parks Commission (Nebraska) • Geologists (Nebraska Board of) • Historical Society (Nebraska State) • Inspector General Child Welfare (Nebraska) • Judicial Resources Commission (Nebraska) • Landscape Architects (Nebraska State Board of) • Office of Public Guardian • Parole (Nebraska Board of) • Public Counsel (Nebraska Office of) • Real Estate Commission (Nebraska) • Secretary of State (Nebraska) • Sidney (City of) • State Patrol (Nebraska) • Tax Rate Review Committee 	Submitted Three Reports <ul style="list-style-type: none"> • Natural Resources (Department of) • Public Service Commission Submitted Four Reports ⁱⁱ <ul style="list-style-type: none"> • Administrator of Retirement Plans • Children's Commission • Crime Commission (Nebraska) • Foster Care Review Board • State Treasurer (Nebraska) • University of Nebraska Submitted Five or More Reports <ul style="list-style-type: none"> • Economic Development (Department of) — 5 • Environment and Energy (Department of) — 5 • Insurance (Department of) — 5 • State College System — 6 • Agriculture (Department of) — 7 • Coordinating Commission for Postsecondary Education — 8 • Labor (Department of) — 8 • Correctional Services (Department of) — 10 • Transportation (Department of) — 13 ⁱⁱⁱ • Revenue (Department of) — 14 • Administrative Services (Department of) — 15 • Nebraska Investment Finance Authority — 18 • Legislative Council — 55 ^{iv} • Health and Human Services (Department of) — 78 ^v
Submitted Two Reports <ul style="list-style-type: none"> • Auditor of Public Accounts • Education (Department of) • Information Technology Commission • Inspector General for Corrections 	<p>ⁱ Nebraska colleges and universities must submit an annual Sexual Harassment and Title IX Compliance Report. These are not listed separately.</p> <p>ⁱⁱ Juvenile detention facilities must file quarterly reports detailing juvenile room confinement and are not listed separately.</p> <p>ⁱⁱⁱ Includes quarterly reports on use of state aircraft.</p>

<ul style="list-style-type: none"> · Investment Council (Nebraska) · Omaha (City of) · State Records Board (Nebraska) · Supreme Court (Nebraska) · University of Nebraska Medical Center · Veterans Affairs (Department of) 	<p>^{iv} Almost all of these (53) are Occupational Regulations Annual Reports as required by R.R.S. sec. 84-948. Each standing committee must analyze approximately 20 percent of the occupational regulations within the jurisdiction of the committee and submit an annual report.</p> <p>^v DHHS has certain reports that must be submitted multiple times each year such as the Monthly Medicaid Expansion Report and the quarterly Expenditures and Outcomes Report And MMIS Replacement Planning Project Report.</p>
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Confirmation of Gubernatorial Appointees

Another opportunity for the Legislature to exercise oversight of the executive branch is through its role in confirming gubernatorial appointees.

Today, the existence of distinct administrative divisions within state government is commonplace. It is also fairly standard to have legislative confirmation of gubernatorial appointments to major agency leadership positions. This has not always been the case in Nebraska. In 1929, LB 425 divided state government into five departments to aid the governor in the “execution and administration of the laws.” These being:

- The Department of Agriculture;
- The Department of Labor;
- The Department of Trade and Commerce;
- The Department of Public Welfare; and
- The Department of Public Works.

The governor was given sole authority to appoint executive heads for the various departments.

Four years later, in 1933, LB 149 made changes to the department structure. The new departments included:

- The Department of Agriculture and Inspection;
- The Department of Labor;
- The Department of Health;
- The Department of Roads and Irrigation;
- The Department of Banking; and
- The Department of Insurance.

Once again, the governor retained the power to appoint the heads of these departments.

It was not until 1941, that the legislature was given a role in selecting the leadership of the code agencies. LB 15 established that the governor’s appointment of department heads be subject to confirmation by a majority of the elected members of the Legislature.

Today, Neb. Rev. Stat. §§ 81-101 and 81-102 set out twelve agencies with heads appointed by the governor and requiring confirmation by the Legislature. These are:

- The Department of Agriculture;
- The Department of Labor;
- The Department of Transportation;
- The Department of Natural Resources;
- The Department of Banking and Finance;
- The Department of Insurance;
- The Department of Motor Vehicles;
- The Department of Administrative Services;
- The Department of Economic Development;
- The Department of Correctional Services;
- The Department of Health and Human Services; and
- The Nebraska State Patrol.

The Legislature's role in the confirmation process extends beyond agency heads, some upper level positions within agencies also require legislative confirmation.

In 1929, "the Governor, with the consent of a majority of the members elected to the Legislature" was charged with appointing the Director of Assistance within the Board of Control of state institutions (LB 425, 1937). The Director of Assistance was, in part, responsible for administering the State Assistance Fund which supported child welfare in the state.

Today, Neb. Rev. Stat. § 81-3113 creates five divisions within the Department of Health and Human Services (1) the Division of Behavioral Health, (2) the Division of Children and Family Services, (3) the Division of Developmental Disabilities, (4) the Division of Medicaid and Long-Term Care, and (5) the Division of Public Health. The governor is responsible for appointing a director for each division and each division director is subject to confirmation by the Legislature (Neb. Rev. Stat. § 81-3115).

Another area where the Legislature has major oversight responsibility is in the creation and membership of boards, committees, commissions and similar entities. Nebraska has more than 200 statutorily created boards and the Legislature plays a pivotal role in their establishment, administration, and operation. Among the many tasks assigned to boards, they provide oversight of governmental programs, regulate licensed professionals, carry out studies, oversee implementation of new programs, advocate for certain constituencies, and advise state agencies.

Members of the Legislature are often required to confirm board members appointed by the Governor. At least 46 boards have members who must be confirmed by a majority vote of the Legislature. The following table sets out the boards and similar entities with members requiring legislative approval.

Nebraska Boards and Committees with Members Requiring Legislative Confirmation⁵

BOARD/COMMITTEE	STATUTE	TOTAL MEMBERS	NUMBER CONFIRMED BY LEGISLATURE
Accountability and Disclosure Commission, Nebraska	49-14,105	9	8
Arts Council, Nebraska	82-309	15	15
Beginning Farmer Board	77-5204	7	5
Blind and Visually Impaired, Commission for the	71-8604	5	5
Boiler Safety Code Advisory Board	81-5,184	7	7
Brand Committee	54-191	7	5
Child Abuse Prevention Fund Board, Nebraska	43-1903	9	7
Climate Assessment Response Committee	2-4901	11	5
Coordinating Commission for Postsecondary Education	85-1403	11	11
Crime Victim's Reparations Committee	81-1802	8	3
Deaf and Hard of Hearing, Commission for the	71-4720	9	9
Educational Lands and Funds, Board of	72-201	5	5
Educational Telecommunications Commission, Nebraska	79-1313	11	9
Electrical Board, State	81-2103	7	7
Emergency Medical Services, Board of	38-1215	17	17
Emergency Response Commission, State	81-15,210	19	13
Environmental Quality Council	81-1503	17	17
Environmental Trust Board, Nebraska	81-15,170	14	9
Ethanol Board, Nebraska	66-1335	7	7
Foster Care Advisory Committee	43-1302	5	5
Game and Parks Commission	86-570	9	9
Health Information Technology Board	81-6,127	17	15
Health, State Board of	71-2601	17	17
Highway Commission	39-1101	7	7
Industrial Relations, Commission of	48-803	5	5
Information Technology Commission, Nebraska	86-515	10	9
Investment Council, Nebraska	72-1237	8	5
Liquor Control Commission, Nebraska	53-105	3	3
Motor Vehicle Industry Licensing Board	60-1402	9	9
Natural Gas Fuel Board	66-2001	8	8
Natural Resources Commission, Nebraska	2-1504	27	14
Oil and Gas Conservation Commission, Nebraska	57-904	3	3
Parole, Board of	83-188	5	5
Personnel Board, State	81-1318	5	5
Power Review Board, Nebraska	70-1003	5	5
Problem Gambling, Nebraska Commission on	9-1003	9	9
Public Employees Retirement Board	54-1501	9	8
Public Roads Classifications and Standards, Board of	39-2106	11	11
Racing Commission, State	2-1201	7	7
Rural Health Advisory Commission	71-5654	13	11
State College System, Board of Trustees of the Nebraska	85-301	7	6
State Fair Board, Nebraska	2-101	11	4
Stem Cell Research Advisory Committee	71-8803	6	4
Tax Equalization and Review Commission	77-5003	3	3
Technical Committee to Review Statewide Assessment and Reporting Plan	79-760.03	5	5
Tourism Commission, Nebraska	81-3710	11	11

Performance Evaluation

In 1992, the Legislature passed the Legislative Program Evaluation Act (LB 988). The Act provided a process for performance evaluation of state agency programs and was the result of an interim study. The program evaluation envisioned was to be a systematic review of agency programs to gauge adherence to legislative intent, overall effectiveness, efficiency, and eliminate potential duplication. "The Legislature recognizes that evaluation of the success of agencies in effectively implementing legislative intent is a logical extension of the initial policy formulation and enactment process." (Laws 1992, LB 988, § 2(2)).

Performance audit means an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decision making by parties with responsibility to oversee or initiate corrective action. Performance audits may have a variety of objectives, including the assessment of a program's effectiveness and results, economy and efficiency, internal control, and compliance with legal or other requirements. (Neb. Rev. Stat. 50-1203 (9)).

The basic process established by LB 988 provides for a Legislative Program Evaluation Committee to select programs to be reviewed and establishes the scope and plans for evaluation. The evaluation is to be conducted by a legislative program evaluation unit comprised of legislative employees. Once the committee establishes the scope of the review the unit conducts the review within the scope without further involvement of the committee. A report is prepared for the committee and the agency reviewed has the opportunity to review the draft report and submit a response to the committee. The committee reviews the report, the agency response, and staff recommendations and amends, adopts, or rejects each staff recommendation. A final report with the adopted recommendations along with any final written agency response is released to members of the Legislature and the public.

LB 607 in 2003, changed the name of the Act, the committee, and the legislative unit. The Act became known as the Performance Audit Act; the legislative committee as Legislative Performance Audit Committee, and the legislative unit as the Legislative Performance Audit Section. A few more name changes were to ensue. In 2006 (LB 956) the legislative unit became Legislative Audit and Research and in 2009 (LB 620) it became the office of Legislative Audit. Today it goes by Legislative Audit Office.

As with other standing and select committees, the Performance Audit Committee is also authorized to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony. (Neb. Rev. Stat. § 50-1205(8))

Over the almost 30 years of its existence, the office of Legislative Audit has been given increasingly more statutory authority to ensure compliance with its requests for information.

Upon receipt of a written request by the office for access to any information or records, the agency shall provide to the office as soon as is practicable and without delay, but not more than three business days after actual receipt of the request, either (a) the requested materials or (b)(i) if there is a legal basis for refusal to comply with the request, a written denial of the request ... (ii) if the entire request cannot with reasonable good faith efforts be fulfilled within three business days ... due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request [must be filed] ... No delay due to the significant difficulty or the extensiveness of a request for access to information or records shall exceed three calendar weeks. (Laws 2015, LB 539, § 3).

A partial list of performance audit reports over the years includes:

- 2021 - Nebraska Historic Tax Credits: A Performance Review of the Job Creation and Mainstreet Revitalization Act
- 2020 - Department of Health and Human Services Division of Children and Family Services: A Review of Hotline and Non-court Data
- 2019 - Administrative Office of the Courts and Probation Juvenile Services Division: Selected Administrative and Service Cost Data
- 2018 - Assessment of Violent Infractions and Staffing at the Youth Rehabilitation and Treatment Center – Kearney
- 2017 - Nebraska Advantage Rural Development Act Performance on Selected Metrics
- 2016 - Memorandum on Children’s Behavioral Health Funding
- 2015 - The DHHS Behavioral Health Division’s Role in Reducing Service Gaps
- 2014 - Nebraska Department of Correctional Services: Disciplinary Process, Programs and Commitment Processes
- 2013 - Measuring Success: Effectively Evaluating Nebraska Tax Incentive Programs

Fiscal Oversight

The ability to control an agency’s budget can be a powerful oversight tool. In 1961 the office of Legislative Fiscal Analyst was established with one of his or her assigned duties being to evaluate the requests for appropriations contained in executive budget requests and make recommendations thereon (Laws 1961, LB 709 §§ 1, 2).

Fiscal analysts work closely with individual agencies examining their budget requests and requiring agencies to justify the amounts they are asking for based on performance metrics and evidence-based outcomes. By statute, agencies and others must furnish any requested information to the fiscal analyst. (Neb. Rev. Stat. § 50-420). Only after the agency has satisfied the fiscal analyst will the analyst present the budget request to the Appropriations Committee which is responsible for

determining the budgeting and related needs of each agency of state government. (Neb. Rev. Stat. § 50-418).

In addition, agency heads must appear at budget hearings before the Appropriations Committee to justify their budget requests in person and potentially have to defend or account for what they have done previously.

Other Oversight Mechanisms

The Nebraska child welfare system and the Nebraska correctional system are two of the most problem-plagued areas of state government. In 2012, the Legislature created the Office of Inspector General of Nebraska Child Welfare to provide full-time investigation and performance review to increase accountability and oversight of the system (Laws 2012, LB 821, § 9). The office assists in improving the operations of the Nebraska child welfare system, provides an independent form of inquiry for concerns regarding the actions and of individuals and agencies responsible for the care and protection of children and youth in the child welfare system, and provide a process to investigate whether a problem exists in the child welfare system that needs legislative action. (Neb. Rev. Stat. § 43-4302 (b), (c), and (d)).

In 2015, the Office of Inspector General of the Nebraska Correctional System was created to increase accountability and oversight of the Nebraska correctional system. (Laws 2015, LB 598, § 2). The office is intended to improve operations of the Nebraska correctional system, provides an independent form of inquiry for concerns regarding the actions of individuals and agencies responsible for the supervision and release of persons in the Nebraska correctional system, and provides a process for investigation and review to improve policies and procedures in the correctional system (Neb. Rev. Stat. § 47-902 (b), (c), and (d)).

Final Thoughts

Throughout its history, the Nebraska Legislature has exercised its oversight authority. Even in the earliest days, the Legislature recognized its responsibility to provide oversight of the operations of government, putting in statute the powers that would allow it to do its work. While some Legislatures have been more proactive in engaging in oversight activities than others, there is strong evidence that all Legislatures have, to some extent, continued the tradition. Whether or not a Legislature is active in its oversight role is driven, in large part, by the personalities in the Legislature at the time, but if it chooses to use its oversight authority, the tools are in place that will allow it to perform the task.

¹ Dahlberg, P. (2014, Dec. 4). After the bills pass: The importance of legislative oversight. *Colorado LegiSource*. <https://legisource.net/2014/12/04/after-the-bills-pass-the-importance-of-legislative-oversight/>

² *Watkins v. United States*, 354 U.S. 178 (1957)

³ NCSL. (n.d.). Separation of powers: Legislative oversight <https://www.ncsl.org/research/about-state-legislatures/separation-of-powers-legislative-oversight.aspx>

⁴ *State ex rel. Peterson v. Ebke*, 303 Neb. 637, 930 N.W.2d 551 (2019)

⁵ This does not include appointments within agencies such as division directors which require legislative confirmation

Nebraska Laws and Statutes Cited

Neb. Const. Art. II, Sec. 1.1

Neb. Rev. Stat. §§ 50-406

Neb. Rev. Stat. §§ 50-406.01

Neb. Rev. Stat. §§ 50-407

Laws 1937, LB 395

Laws 1949, LB 540

Laws 2020, LB 681

Laws 1965, LB 36

Laws 2013, LB 613

Laws 1929, LB 425

Laws 1933, LB 149

Laws 1941, LB 15

Neb. Rev. Stat. § 81-101

Neb. Rev. Stat. § 81-102

Laws 1937, LB 425

Neb. Rev. Stat. § 81-3113

Neb. Rev. Stat. § 81-3115

Laws 1992, LB 988

Neb. Rev. Stat. § 1203

Laws 2003, LB 607

Laws 2006, LB 956

Laws 2009, LB 620

Neb. Rev. Stat. § 50-1205

Laws 2015, LB 539

Laws 1961, LB 709

Neb. Rev. Stat. § 50-420

Neb. Rev. Stat. § 50-418

Laws 2012, LB 821

Neb. Rev. Stat. § 43-4302

Laws 2015, LB 592

Neb. Rev. Stat. § 47-902